

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs July 23, 2008

JANE STEVENSON KALP DEVEREAUX v. JEROME W. DEVEREAUX

Appeal from the Chancery Court for Jefferson County
No. 05-138 Telford E. Forgety, Jr., Chancellor

No. E2007-02189-COA-R3-CV - FILED AUGUST 19, 2008

Husband appeals the trial court's decision granting his wife a divorce and dividing the personal property of the parties. On appeal, the husband raises several issues. Upon review, we conclude that the husband failed to raise any of these issues with the trial court and failed to provide a transcript or an adequate statement of the evidence for us to review as to the trial court's factual findings. The judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Jerome W. Devereaux, Sr., Wartburg, Tennessee, *pro se* Appellant.

Jane Stevenson Kalp Devereaux, Lords Valley, Pennsylvania, *pro se* Appellee.

MEMORANDUM OPINION¹

Jane Stevenson Kalp Devereaux ("Wife") and Jerome W. Devereaux, Sr., ("Husband") were married in 1975 and separated in 2001. Wife filed for divorce in July of 2005. At the time the divorce was filed and at the time of trial, Husband was in prison as a result of a felony conviction. Husband filed an answer to the complaint for divorce and several motions. Husband was not able to attend the trial on July 6, 2007, but his deposition was taken and presented at trial. The trial court awarded Wife a divorce on the ground of inappropriate marital conduct, awarded Wife a vehicle and all personal property in her possession, and awarded Husband all personal property in his possession.

¹Tenn. Ct. App. R. 10 provides as follows:

Memorandum Opinion – This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

The trial court did not make a ruling as to the marital real property since the property was subject to another case currently pending in the same court. Husband appeals.

On appeal, Husband argues that the trial court erred in failing to dismiss the complaint for divorce because the complaint was not in compliance with Tenn. Code Ann. § 36-4-106(b)(1); the trial court erred in granting the divorce without ruling on all pending motions; and the trial court erred in granting the divorce without first properly disposing of all marital property issues.

We find no merit in Husband's issues. Husband first argues that the divorce complaint did not comply with the requirements of Tenn. Code Ann. § 36-4-106(b)(1). Although raised in his answer, Husband did not present this issue to the trial court at a pretrial hearing or at the trial. Although Husband appeared before the trial court by deposition and had the opportunity to raise this issue with the court, he failed to do so. In his deposition, he told the court "[n]ow, as far as the divorce itself, I have no objection to it" We decline to address this issue on appeal. Issues not presented and ruled upon by the trial court cannot be raised on appeal. *Wood v. Lowery*, 238 S.W.3d 747, 763 (Tenn. Ct. App. 2007) (holding that "[t]his Court cannot review issues which are not presented and ruled upon in the trial court") (citations omitted), *King v. Now Invs., Inc.*, 1987 WL 18891, at *2 (Tenn. Ct. App. Oct. 27, 1987) (holding that "[t]his court, being a court of errors, cannot review issues not presented and ruled upon by the trial court"), *perm. app. denied* (Tenn. Feb. 1, 1988); *see also Moss Hotel Co. v. Soil & Material Eng'rs, Inc.*, No. 03A01-9102-CV-00044, 1991 WL 96576, at *1 (Tenn. Ct. App. June 10, 1991) (declining to rule on an issue because the trial court did not rule on it), *perm. app. denied* (Tenn. Feb. 18, 1992).

Husband also argues that the trial court failed to rule on motions filed before the trial. The record indicates that on October 11, 2005, Husband filed a motion for an enlargement of time to hear Wife's motion to order the sale of real estate and to order alimony pendente lite from sale proceeds, a motion for the appointment of counsel, and a motion for leave to file omitted counterclaim. On October 31, 2005, Husband filed a motion to allow release of proceeds. On July 10, 2006, Husband filed a motion to terminate deposition or limit examination. Husband took no steps to have any of these motions set for hearing and failed to bring them to the court's attention during his trial testimony by way of deposition. Husband cannot sit upon his rights in the trial court and then expect relief in the appellate court. An appellate court "may only decide issues which were brought to the attention of the trial judge, 'and acted upon or pretermitted by him.'" *In re Sentinel Trust Co.*, 206 S.W.3d 501, 528 (Tenn. Ct. App. 2005) (quoting *Clement v. Nichols*, 209 S.W.2d 23, 24 (1948)); *see also Yeary v. CMH Mfg., Inc.*, No. E2007-2190-WC-R3-WC, 2008 WL 2557369, at *7 (Tenn. Workers Comp. Panel Feb. 25, 2008) (holding an issue concerning a statute of limitations that was raised in the defendant's answer was waived because "no motion or similar document, nor reference in the transcript [suggested] that th[e] issue was ever presented to the trial court"). We find that this issue has been waived.

Finally, Husband argues that the trial court erred in granting the divorce without first properly disposing of all marital property issues. Husband takes issue with an agreement he entered into with Wife while the divorce was pending and alleges it was "a mere fraud to trick" him into selling the marital property. Husband does not appear to take issue with the trial court's disposition of the marital property that remained as of the time of trial. We do not have a transcript of the

evidence, and Husband's statement of the evidence provides that he "has absolutely no idea of what information was testified to at the hearing on the divorce." As we have previously stated, we cannot review issues that were not presented or ruled on by the trial court. *In re Sentinel Trust Co.*, 206 S.W.3d at 528. Further, without a record of what occurred at trial, we cannot review factual findings made by the trial court. We have stated on prior occasion that "[w]here issues raised go to the evidence, there must be a transcript. In the absence of a transcript of the evidence, there is a conclusive presumption that there was sufficient evidence before the trial court to support its judgment, and this Court must therefore affirm the judgment." *Coakley v. Daniels*, 840 S.W.2d 367, 370 (Tenn. Ct. App. 1992); *see also Houston v. Mounger*, No. E2002-00779-COA-R3-CV, 2003 WL 22415363, at *2 (Tenn. Ct. App. E.S., Oct. 23, 2003). Accordingly, in light of the absence of either a transcript or statement of the evidence concerning the testimony at trial, we must assume that the factual findings set forth in the trial court's judgment are true and were adequately supported by the evidence presented at trial.

For the reasons stated herein, the judgment of the trial court is affirmed, and all costs are taxed to the Appellant, Jerome W. Devereaux, Sr.

SHARON G. LEE, JUDGE